

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 440

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT;
CLARIFYING CERTAIN DEFINITIONS; REMOVING THE REQUIREMENT THAT
THE ECONOMIC DEVELOPMENT DEPARTMENT MAKE CERTAIN
DETERMINATIONS; EXTENDING THE FINANCING ASSISTANCE AND PROJECT
ELIGIBILITY PERMITTED PURSUANT TO THE STATEWIDE ECONOMIC
DEVELOPMENT FINANCE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-25-3 NMSA 1978 (being Laws 2003,
Chapter 349, Section 3, as amended) is amended to read:

"6-25-3. DEFINITIONS.--As used in the Statewide Economic
Development Finance Act:

A. "authority" means the New Mexico finance
authority;

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1 B. "department" means the economic development
2 department;

3 C. "community development entity" means an entity
4 designed to take advantage of the federal new markets tax
5 credit program;

6 D. "economic development assistance provisions"
7 means the economic development assistance provisions of
8 Subsection D of Article 9, Section 14 of the constitution of
9 New Mexico;

10 E. "project revenue bonds" means bonds, notes or
11 other instruments authorized in Section 6-25-7 NMSA 1978 and
12 issued by the authority pursuant to the Statewide Economic
13 Development Finance Act on behalf of eligible entities;

14 F. "economic development goal" means:

15 (1) assistance to rural and underserved areas
16 designed to increase business activity, including agricultural
17 enterprises, such as new or ongoing agricultural projects that
18 add value to New Mexico agricultural products;

19 (2) retention and expansion of existing
20 business, including agricultural enterprises, such as new or
21 ongoing agricultural projects that add value to New Mexico
22 agricultural products;

23 (3) attraction of new business, including
24 agricultural enterprises, such as new or ongoing agricultural
25 projects that add value to New Mexico agricultural products; or

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1 (4) creation and promotion of an environment
2 suitable for the support of start-up and emerging business,
3 including agricultural enterprises, such as new or ongoing
4 agricultural projects that add value to New Mexico agricultural
5 products within the state;

6 G. "economic development revolving fund bonds"
7 means bonds, notes or other instruments payable from the fund
8 and issued by the authority pursuant to the Statewide Economic
9 Development Finance Act;

10 H. "eligible entity" means a for-profit or not-for-
11 profit business, including an agricultural enterprise, such as
12 new or ongoing agricultural projects that add value to New
13 Mexico agricultural products and including a corporation,
14 limited liability company, partnership or other entity,
15 [~~determined by the department to be~~] engaged in an enterprise
16 that serves an economic development goal and is suitable for
17 financing assistance;

18 I. "federal new markets tax credit program" means
19 the tax credit program codified as Section 45D of the Internal
20 Revenue Code of 1986, as that section may be amended or
21 renumbered, and regulations issued pursuant to that section;

22 J. "financing assistance" means project revenue
23 bonds, loans, loan participations, [~~or~~] loan guarantees or
24 other funding provided by the authority to or for eligible
25 entities pursuant to the Statewide Economic Development Finance

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1 Act;

2 K. "fund" means the economic development revolving
3 fund;

4 L. "mortgage" means a mortgage, deed of trust or
5 pledge of any assets as a collateral security;

6 M. "opt-in agreement" means an agreement entered
7 into between the department and a qualifying county, a school
8 district and, if applicable, a qualifying municipality that
9 provides for county, school district and, if applicable,
10 municipal approval of a project, subject to compliance with all
11 local zoning, permitting and other land use rules, and for
12 payments in lieu of taxes to the qualifying county, school
13 district and, if applicable, qualifying municipality as
14 provided by the Statewide Economic Development Finance Act;

15 N. "payment in lieu of taxes" means the total
16 annual payment, including any state in-lieu payment, paid as
17 compensation for the tax impact of a project, in an amount
18 negotiated and determined in the opt-in agreement between the
19 department and the qualifying county, the school district and,
20 if applicable, the qualifying municipality, which payment shall
21 be distributed to the county, municipality and school district
22 in the same proportion as property tax revenues are normally
23 distributed to those recipients;

24 O. "standard project" means land, buildings,
25 improvements, machinery and equipment, operating capital, [and

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1 ~~other~~] personal property or other expenditures for which
 2 financing assistance is provided for adequate consideration,
 3 taking into account the anticipated quantifiable benefits of
 4 the standard project, for use by an eligible entity as:

5 (1) industrial or manufacturing facilities;

6 (2) commercial facilities, including
 7 facilities for wholesale sales and services;

8 (3) health care facilities, including
 9 hospitals, clinics, laboratory facilities and related office
 10 facilities;

11 (4) educational facilities, including schools;

12 (5) arts, entertainment or cultural
 13 facilities, including museums, theaters, arenas or assembly
 14 halls;

15 (6) recreational and tourism facilities,
 16 including parks, pools, trails, open space and equestrian
 17 facilities; ~~and~~

18 (7) agricultural enterprises, including new or
 19 ongoing agricultural projects and projects that add value to
 20 New Mexico agricultural products;

21 (8) loan loss reserves or collateral
 22 fortification; or

23 (9) other expenditures;

24 P. "project" means a standard project or a state
 25 project;

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1 Q. "qualifying municipality or county" means a
2 municipality or county that enters into an opt-in agreement;

3 R. "quantifiable benefits" means a project's
4 advancement of an economic development goal as measured by a
5 variety of factors, including:

6 (1) the benefits an eligible entity contracts
7 to provide, such as local hiring quotas, job training
8 commitments and installation of public facilities or
9 infrastructure; ~~and~~

10 (2) other benefits such as the total number of
11 direct and indirect jobs created by the project, total amount
12 of annual salaries to be paid as a result of the project, total
13 gross receipts and occupancy tax collections, total property
14 tax collections, total state corporate and personal income tax
15 collections and other fee and revenue collections resulting
16 from the project; and

17 (3) other measurable benefits to the economy
18 or well-being of the state;

19 S. "school district" means a school district where
20 a project is located that is exempt from property taxes
21 pursuant to the Statewide Economic Development Finance Act;

22 T. "state in-lieu payment" means an annual payment,
23 in an amount determined by the department, that will be
24 distributed to a qualifying county, a school district and, if
25 applicable, a qualifying municipality in the same proportion as

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1 property tax revenues are normally distributed to those
2 recipients;

3 U. "state project" means land, buildings or
4 infrastructure for facilities to support new or expanding
5 eligible entities for which financing assistance is provided
6 pursuant to the economic development assistance provisions; and

7 V. "tax impact of a project" means the annual
8 reduction in property tax revenue to affected property tax
9 revenue recipients directly resulting from the conveyance of a
10 project to the department."

11 SECTION 2. Section 6-25-6 NMSA 1978 (being Laws 2016,
12 Chapter 38, Section 1, as amended) is amended to read:

13 "6-25-6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS
14 AND DUTIES.--

15 A. To implement a program to assist eligible
16 entities in financing projects, the authority has the powers
17 specified in this section.

18 B. State projects receiving financing assistance
19 with money in the fund shall first be approved by law. To
20 protect public money in the fund or other public resources,
21 rules of the authority relating to state projects shall include
22 provisions to ensure achievement of the economic development
23 goals of the state project and shall describe the means of
24 recovering public money or other public resources if an
25 eligible entity defaults on its obligations to the authority.

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1 C. Standard projects receiving financing assistance
2 with money in the fund shall be approved by the authority
3 pursuant to rules approved by the New Mexico finance authority
4 oversight committee. Beginning July 1, 2023, standard projects
5 shall first be approved by law.

6 D. The authority may:

7 (1) issue project revenue bonds on behalf of
8 an eligible entity, payable from the revenues of a project and
9 other revenues authorized as security for the bonds, to finance
10 a project on behalf of an eligible entity;

11 (2) ~~[make loans]~~ provide financing assistance
12 from the fund for projects to eligible entities ~~[that establish~~
13 ~~one or more dedicated sources of revenue to repay the loan from~~
14 ~~the authority]~~;

15 (3) enter into loan participation agreements
16 from the fund for projects, whether in the form of an interest
17 rate buy-down, the purchase of loans or portions of loans
18 originated and underwritten by third-party lenders or other
19 similar arrangements;

20 (4) provide loan guarantees from the fund for
21 projects;

22 (5) make, execute and enforce all contracts
23 necessary, convenient or desirable for purposes of the
24 authority or pertaining to project revenue bonds, economic
25 development revolving fund bonds, loans, loan participations or

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1 loan guarantees and the Statewide Economic Development Finance
2 Act and pay the reasonable value of services rendered to the
3 authority pursuant to the contracts;

4 (6) purchase and hold loans and loan
5 participations in the fund at prices and in a manner determined
6 by the authority;

7 (7) sell loans and loan participations
8 acquired or held by the authority in the fund at prices and in
9 a manner determined by the authority;

10 (8) prescribe the form of application or
11 procedure required of an eligible entity to apply for financing
12 assistance;

13 (9) fix the terms and conditions of the
14 financing assistance, including the priority of lien and type
15 of collateral or other security, and enter into agreements with
16 eligible entities with respect to financing assistance;

17 (10) fix, revise from time to time, charge and
18 collect fees and other charges in connection with the issuance
19 of bonds; the making, purchase, participation in or guarantee
20 of loans; and the review of proposed financing assistance to an
21 eligible entity, whether or not the financing assistance is
22 provided;

23 (11) employ architects, engineers, accountants
24 and attorneys; construction and financial experts; and such
25 other advisors, consultants and agents as may be necessary in

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1 its judgment, and fix and pay their compensation;

2 (12) to the extent allowed under its contracts
3 with the holders of bonds of the authority, consent to
4 modification of the rate of interest, time and payment of
5 installments of principal or interest, security or any other
6 term of financing assistance;

7 (13) consider the ability of the eligible
8 entity to secure financing for a project from other sources and
9 the costs of that financing;

10 (14) acquire fee simple, leasehold,
11 mortgagor's or mortgagee's interests in real or personal
12 property and sell, mortgage, convey, lease or assign that
13 property for authority purposes; and

14 (15) in the event of default by an eligible
15 entity, enforce its rights by suit, mandamus and all other
16 remedies available under law.

17 E. The authority shall adopt rules subject to
18 approval of the New Mexico finance authority oversight
19 committee to:

20 (1) establish procedures for applying for
21 financing assistance;

22 (2) establish credit qualifications for
23 eligible entities and establish terms and conditions for
24 financing assistance;

25 (3) establish economic development goals for

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1 projects in consultation with the department;

2 (4) establish methods for determining
3 quantifiable benefits;

4 (5) provide safeguards to protect public money
5 and other public resources provided for a state project;

6 (6) establish procedures by which the
7 authority requests approval by law for projects receiving
8 financing assistance with money in the fund; and

9 (7) establish fees to pay the costs of
10 evaluating, originating and administering financing assistance.

11 F. The authority shall coordinate with the
12 department to provide staffing and other assistance to the
13 department in carrying out the department's responsibilities
14 and activities pursuant to the Statewide Economic Development
15 Finance Act.

16 G. The authority shall report to the New Mexico
17 finance authority oversight committee twice each year regarding
18 the total expenditures from the economic development revolving
19 fund for the previous fiscal year, the purposes for which
20 expenditures were made, an analysis of the progress of the
21 projects funded and proposals for legislative action."

22 **SECTION 3.** Section 6-25-13 NMSA 1978 (being Laws 2003,
23 Chapter 349, Section 13, as amended) is amended to read:

24 "6-25-13. ECONOMIC DEVELOPMENT REVOLVING FUND.--

25 A. The "economic development revolving fund" is

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1 created within the authority. The fund shall be administered
2 by the authority as a separate account and may consist of such
3 subaccounts as the authority deems necessary to carry out the
4 purposes of the fund. The authority may establish procedures
5 for administering the fund in accordance with the Statewide
6 Economic Development Finance Act.

7 B. Except as otherwise provided in the Statewide
8 Economic Development Finance Act, money from payments of
9 principal of, interest on and other fees or charges paid to the
10 authority in connection with economic development revolving
11 fund bonds, loans, project revenue bonds purchased with money
12 on deposit in the fund, loan participations and loan guarantees
13 shall be deposited in the fund.

14 C. Money in the economic development revolving fund
15 is appropriated to the authority to:

- 16 (1) pay the reasonably necessary
17 administrative and other costs incurred by the authority in
18 evaluating, processing, originating and servicing economic
19 development revolving fund bonds, loans, project revenue bonds,
20 loan participations and loan guarantees;
- 21 (2) purchase loan participations for projects;
- 22 (3) ~~[make loans]~~ provide financing assistance
23 for projects;
- 24 (4) make loan guarantees for projects; and
- 25 (5) purchase project revenue bonds.

1 D. Money in the economic development revolving fund
2 that is not needed for immediate disbursement, including money
3 held in reserve, may be deposited or invested in the same
4 manner as other funds administered by the authority.

5 E. Money on deposit in the economic development
6 revolving fund may be designated as a reserve for economic
7 development revolving fund bonds issued and for financing
8 assistance provided from the fund by the authority pursuant to
9 the Statewide Economic Development Finance Act and the
10 authority may covenant in any resolution or trust indenture to
11 maintain and replenish the reserve from money deposited in the
12 fund.

13 F. Money in the economic development revolving fund
14 may be used to purchase project revenue bonds issued by the
15 authority pursuant to the Statewide Economic Development
16 Finance Act, which are payable from any designated source of
17 revenues or collateral. Purchasing and holding the bonds shall
18 not result in cancellation or merger of the bonds,
19 notwithstanding the fact that the authority as the issuer of
20 the bonds is obligated to make the required debt service
21 payments and the fund held by the authority is entitled to
22 receive the required debt service payments."

23 SECTION 4. Section 6-25-17 NMSA 1978 (being Laws 2005,
24 Chapter 103, Section 14) is amended to read:

25 "6-25-17. ECONOMIC DEVELOPMENT REVOLVING FUND BONDS OF
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1 THE AUTHORITY--USE--SECURITY.--

2 A. The authority may issue and sell economic
3 development revolving fund bonds in principal amounts it
4 determines necessary to provide sufficient money for any
5 purpose of the Statewide Economic Development Finance Act,
6 including:

- 7 (1) ~~[making loans]~~ providing financing
8 assistance;
- 9 (2) entering into loan participations;
- 10 (3) providing loan guarantees;
- 11 (4) purchasing project revenue bonds;
- 12 (5) paying, funding or refunding of the
13 principal of or interest or redemption premiums on economic
14 development revolving fund bonds issued by the authority,
15 whether the economic development revolving fund bonds or
16 interest to be paid, funded or refunded have or have not become
17 due;

- 18 (6) establishing or increasing reserves or
19 sinking funds to secure or to pay principal, premium, if any,
20 or interest on economic development revolving fund bonds; and

- 21 (7) paying all other costs or expenses of the
22 authority incident to and necessary or convenient to carry out
23 its duties pursuant to the Statewide Economic Development
24 Finance Act.

25 B. All economic development revolving fund bonds

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1 issued by the authority shall be payable solely from the fund
2 and the revenues, income and fees deposited in the fund, and
3 the economic development revolving fund bonds shall not create
4 an obligation, debt or liability of the state. No breach of
5 any pledge, obligation or agreement of the authority shall
6 impose a pecuniary liability or a charge upon the general
7 credit or taxing power of the state or any political
8 subdivision of the state."

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underscoring material = new
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